

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WESLEY HOWARD,

Plaintiff,

V.

MAXUM INDEMNITY COMPANY,

Defendant.

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Civil Action No. 3:16-cv-2487

NOTICE OF REMOVAL

Defendant, Maxum Indemnity Company (“Maxum”), removes this civil action, originally filed in the 160th District Court of Dallas County, Texas, to this Court, under 28 U.S.C. §§ 1332, 1441 and 1446, and respectfully shows the Court as follows:

1. As required by Local Rule 81.1, Maxum attaches the following documents to this notice of removal:

- (A) “an index of all documents that clearly identifies each document and indicates the date the document was filed in state court”;¹
- (B) “a copy of the docket sheet in the state court action”;²
- (C) “each document filed in the state court action, except discovery material”;³ and
- (D) “a separately signed certificate of interested persons that complies with LR 3.1(c) or 3.2(e).”⁴

¹ Exhibit 1.

² Exhibit 2.

³ Plaintiff’s Original Petition is filed as a freestanding exhibit, Exhibit 3, for ease of future reference. The remaining state court filings are filed together as Exhibit 4, with individual documents marked with letters corresponding to those listed on the index filed as Exhibit 1.

⁴ Exhibit 5.

2. On July 29, 2016, plaintiff Wesley Howard (“Howard”) filed his original petition in the 160th District Court of Dallas County, Texas, under Cause No. DC-16-09121 against Maxum. Howard alleges causes of action against Maxum for breach of contract; “common-law cause of action”; Deceptive Trade Practices Act violations, Texas Insurance Code violations; and violation of Prompt Payment of Claims Act.⁵

2. The Texas Commissioner of Service received service of the petition on Maxum’s behalf on August 5, 2016, a date 30 or less days before the filing of this notice of removal.⁶

3. The amount in controversy, exclusive of interest and costs, exceeds \$75,000. Howard alleges damages in his petition based on his having been diagnosed with “pleurisy as a result of inhaling chlorine gas,” having sustained chemical burns to his lungs, and having pain and suffering both in the past and “in all reasonable probability ... for the rest of his life.”⁷

4. Howard alleges he is “an individual, a resident and citizen of the State of Texas.”⁸

5. Maxum is a Delaware corporation with its principal place of business in Georgia.

6. Therefore, complete diversity exists between the parties, and because the amount in controversy exceeds \$75,000, this Court has subject matter jurisdiction based on diversity of citizenship.

7. Plaintiff demanded a jury trial in his petition. Maxum also demands a trial by jury on all issues of fact, if any.

WHEREFORE, Maxum respectfully requests the Court to sustain this removal and retain jurisdiction over the suit, and to grant all other and further relief to which Maxum may be entitled.

⁵ See Exhibit 3, Plaintiff’s Original Petition.

⁶ See Exhibit 4-C, Return of Service.

⁷ See Exhibit 3 at 3.

⁸ See *id.* at 1.

Respectfully submitted,

/s/ Joseph A. Ziemianski

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ATTORNEYS FOR DEFENDANT,
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CERTIFICATE OF SERVICE

I certify that a true copy of this document was served on

W.D. Masterson

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Fax: (214) 953-0133

Attorney for plaintiff, Wesley Howard

via electronic mail and certified mail, return receipt requested on August 26, 2016.

/s/ Joseph A. Ziemianski

Joseph A. Ziemianski